

# Undefinitized Terms Contracts/Revisions Guideline - 3.7.G (07/21/03)

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## **Last Update: (07/21/03) Shibata:kma - 3.7.G.0**

This guideline has been revised to revise the threshold for DOE approval of an Undefinitized Terms Contract or Revision to \$10,000,000.

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# Usage of Undefined Terms Contracts

## - 3.7.G.1

Undefined Terms Contracts and Revisions is a method of having a contractor commence performance on a procurement while the contracting process is in progress. Undefined Terms Contracts and Revisions should be used only when it is imperative that performance commence or continue. They are not to be used for reasons of preference or convenience. Undefined Terms Contracts and Revisions only allow a contractor to begin or continue performance and are never a substitute for a definitized contract or revision. Undefined Terms Contracts and Revisions can authorize only partial funding for a specified period of time and never funded for the full value of the overall project. When determining the necessity for an Undefined Terms Contracts or Revision, the SCR should take into account the following potential problems that may exist on the usage of such contracts:

- Undefined Terms Contracts and Revisions can reduce Sandia's negotiating position;
- If allowed to continue for an excessive period of time, they become a cost plus percentage of cost contract, which is an illegal contract type; and
- Some contractor's will not accept an Undefined Terms Contract or Revision.

Undefined Terms Contracts and Revisions may be issued:

1. Prior to Submission of Contractor Proposal,
2. Prior to completion of price cost analysis, and
3. In a non-competitive situation, a UTC can be issued concurrently with the solicitation. In this case, the UTC and Solicitation would be reviewed and approved concurrently. All approvals, Security Classifications, and basic agreement on terms and conditions must be obtained prior to placing the UTC.

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# Undefined Terms Contract Format -

## 3.7.G.2

The following table provides information, which the SCR must consider when preparing the Undefined Terms Contract utilizing the Oracle template.

Paragraph	SCR Action
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1	Create a Standard Purchase Order (to obtain contract number).
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- 2
- Prepare an Undefined Terms Contract using the approved format in the “Undefined Terms Contract” Oracle Template. Fill in required information such as:
    - solicitation number,
    - date of solicitation, and
    - period of performance (normally not to exceed 120 days).
  - Select appropriate priority or indicate none.
  - Select appropriate pricing arrangement.
  - Define the specific portion of contract work, which is authorized.
  - Select and incorporate the appropriate Section II Ts&Cs.

**Note:** Any exceptions taken to Sandia's Ts&Cs by a Contractor must be approved by SNL Legal prior to incorporation into the Undefined Terms Contract (see Section 3.7.G.2), unless they are preapproved.

- 3
- Specify a time limit (normally two to three weeks prior to the expiration date shown in Paragraph 1 of the UTC template) within which agreement must be reached between SNL and the Contractor on the Final Forms contract.
  - Allow enough time to get the required approvals.
  - Delete certificate requirement if not applicable.

**Warning:** The SCR should make every effort to obtain a formal proposal prior to placing an Undefined Terms Contract.

- 4
- Specify maximum amount of funds Contractor is authorized to spend or obligate under the Undefined Terms Contract (total dollar amount in the Oracle SPO must be the same).

- 5
- Select pricing arrangement for Final Form Contract and insert appropriate paragraph, either 7(a) or 7(b).

If the SCR wishes to allow monthly billings then 7(b) and 7(c) should be used simultaneously.

7(a) - Use for other than T&M or LH. This provision will be invoked only when the Undefined Terms Contract is terminated:

1. Due to failure of SNL and the Contractor to agree to the terms of a Final Form Contract, or
2. If it is SNL's best interest to terminate. In such cases, settlement will be made in accordance with Section II Termination for Convenience Clause, except that no profit or fee will be negotiated. Exceptions may be granted under extraordinary conditions and must be approved by the Director of the Procurement and Logistics Center.

**Caution:** In both scenarios above, the settlement may not exceed the monetary limit specified in Paragraph 5 of the Undefined Terms Contract.

**Note:** Paragraph 7(a) overrides the provision in the Termination Clause of Section II that, under most situations, allows for profit or fee. Since profit or fee is not normally allowed on an Undefined Terms Contract for other than T&M or LH, the Contractor's position is very similar should the Undefined Terms Contract be terminated for either convenience or default.

7(b) - Applies to T&M or LH contracts and provides for:

- Termination for default,
- Termination for convenience, and
- Termination due to failure of SNL and the Contractor to agree to the terms of a definitive contract.

**Note:** Paragraph 7(b) does not invoke, but instead supersedes the Termination Clause in Section II, since the latter provides for a settlement which is based largely on an agreed-upon hourly rates; whereas, in the case of a Undefined Terms Contract, the hourly rate has not yet been established.

**Note:** SCR should note that an acceptance signature is required for all Undefined Terms Contracts.

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## Exceptions to Terms and Conditions - 3.7.G.3

The Ts&Cs of the Undefined Terms Contract shall conform to the extent possible, to those of the prospective Final Form Contract.

Exceptions, if any, to the Ts&Cs, if agreed to by the SCR and the Contractor, and approved by SNL Legal, must appear in the Undefined Terms Contract.

The Final Form Contract will include all final Ts&Cs, including any exceptions, which have been agreed to by the SCR and the Contractor and approved by SNL Legal.

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## Undefined Contract Revision - 3.7.G.4

In some instances urgent changes to definitive contracts are required. This may be accomplished by issuing an Undefined Contract Revision (UCR) using the UCR Oracle template and following these steps.

Paragraph	SCR Action
1	Fill in: <ul style="list-style-type: none"><li>- UCR number (contract number plus sequential revision number),</li><li>- effective date of UCR, and</li><li>- existing contract number.</li></ul>
2	If applicable, define the specific portion of contract work that is being changed or authorized.
3	Fill in period of performance for UCR.  <b>Note:</b> Increases in period of performance should normally not exceed 60 days.
4	The UCR should specify: <ul style="list-style-type: none"><li>- additional amount of funds authorized under UCR,</li><li>- amount of funds currently authorized under contract, and</li><li>- cumulative maximum amount of funds Contractor is authorized to spend or obligate.</li></ul>
5	Select appropriate pricing arrangement/termination paragraph by incorporating, either 5(a) or 5(b) into UCR.

5(a) - Use this paragraph for other than T&M or LH contracts.

5(b) - Use this paragraph for T&M or LH contracts.

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## Undefinitized Terms Contracts and Revisions Approvals - 3.7.G.5

Undefinitized Terms Contracts, revisions to Undefinitized Terms Contracts and UCRs require the same levels of approval as will be required for the resulting Final Form Contract or definitive contract revision. Including, if required, TEAM Review, Auditing, Legal, etc. However, for Undefinitized Terms Contracts (UTC) and UCR's greater than the TEAM review threshold, but less than \$25,000,000, the following applies:

- If the SCR knows that a UTC or UCR will be need to be issued concurrently with issuance of an RFQ, the UTC or UCR should be submitted with the solicitation for TEAM review. The Definitized contract will be submitted for TEAM review.
- If it is later determined that a UTC or UCR is required, than the cognizant Procurement Manager will approve the UTC or UCR without TEAM review using his or her best professional discretion and judgment. The Definitized contract will be submitted for TEAM review.

The amount of funds obligated under an Undefinitized Terms Contract must be commensurate with the amount of work to be performed and shall not exceed 50 percent of the estimated cost of the Final Form Contract unless approved in advance by the cognizant Procurement Manager.

All DOE approvals and reviews needed for the Final Form Contract must be obtained prior to issuance of the Undefinitized Terms Contract (e.g., FOCI, OCI, foreign, Lockheed Martin procurements and contracts where the anticipated value of the Final Form Contract will exceed \$10,000,000).

**Note:** SCR should note that an acceptance signature from the Contractor is required for all Undefinitized Transactions (i.e., UTCs and UCRs).

### Security Considerations 3.7.G.5.1

#### Security Considerations for Undefinitized Terms Contracts 3.7.G.5.1.a

If access to classified information is required for performance of the work authorized in the Undefinitized Terms Contract, or if unescorted access is required, the Contract Security Classification Specification (CSCS) must be approved by the Sandia Facility Survey and Approval Coordinator prior to placement of the contract as described in the Security Guideline 5.4.G - The Undefinitized Terms Contract or shall incorporate SC 602-CLR - Classified Matter

Requirements in the Undefined Terms Contract or if access to classified information is required.

### **Security Considerations for Undefined Terms Contract Revisions 3.7.G.5.1.b**

If an Undefined Contract Revision changes the security classification of the work, or changes the period of performance of the contract, a new CSCS may be required as indicated in the Security Guideline in sections 5.4.G.a and 5.4.G.b. The SCR must incorporate the appropriate security clauses into the Undefined Terms Contract Revision as necessary.

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## **Undefined Terms Contracts and Revisions Documentation - 3.7.G.6**

The following documents shall accompany the Undefined Terms Contract, revisions to Undefined Terms Contracts, or UCRs throughout all approval channels:

- Memorandum of Justification which shall be prepared by the SCR and shall cover the following points:
  - estimated value of resulting Final Form contract or revision,
  - justification for issuance of an Undefined Terms Contract or UCR,
  - justification for type of contract (pricing arrangement),
  - explanation on how the level of funding of the UTC or UTR is commensurate with the work to be performed,
  - explanation of the need for the product or service, taking into consideration the overall program procurement requirements,
  - basis for Contractor selection, and
  - credit approval, if applicable.

**Note:** The SCR will contact Sandia Auditing to ensure that the Contractor's accounting system will support a cost type contract prior to the placement of a UTC.

- Memorandum of Justification attachments, if applicable:
  - Sole-Source Justification, and
  - Technical Evaluation Report.

- Department of Labor (DOL) EEO release or statement from DOE that clearance has been granted (nonconstruction contracts \$10 million or more),
- copy of the solicitation and any revisions thereto,
- copy of the PR which includes the required date, and
- Requester's justification for urgency.

If available, a copy of the preaward audit report should accompany the Undefined Terms Contract, revisions to Undefined Terms Contracts, or UCRs.

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## Undefined Terms Contracts and Revisions Distribution - 3.7.G.7

The SCR shall make the following distribution of Undefined Terms Contracts, revisions to Undefined Terms Contracts, or UCRs:

- Auditing for any cost-type contract (e.g., CNF, CPFF, TM),
- Procurement contract file, and
- Requesting line organization.

**Note:** Package must include a copy of the Standard Purchase Order, cover sheet, and UTC.

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## Definitizing an Undefined Terms Contract - 3.7.G.8

Normally an Undefined Terms Contract should not exceed 120 days. However, definitization must occur within 180 days after the date of the Undefined Terms Contract, or before completion of 40 percent of the work to be performed under the definitized contract. Exceptions may be authorized by the cognizant Procurement Manager.

Upon reaching an agreement to terms on an UTC, the SCR will issue a revision to finalize the contract. The revision shall specify all agreed to terms and conditions and include the Final Form Contract clause, which states that the revision finalizes the contract in its final form. If the value of the Final Form contract exceeds \$25,000,000, DOE approval must be obtained prior to issuance of the Final Form contract.



## Procurement Action Summary - 3.7.G.8.a

The PAS for the resulting definitive contract shall include or summarize:

- the value of the Undefined Terms Contract, and
  - the Memorandum of Justification.
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## UTC/UCR Kit - 3.7.G.9

To aid the SCR in the preparation of an UTC, UCR, and approval documents, a UTC/UCR Kit containing templates for the required documents and directions for the completion of the documents has been posted on the Procurement Internal Home Page. The Kit contains the following Word documents:

- Undefined Terms Contracts and Revisions Kit – Directions
- Memorandum of Justification for an Undefined Terms Contract (UTC) or an Undefined Terms Revision

**Contract and Contract Revision Templates of which the SCR is to select one for use.**

- Undefined Terms Contract - Cost Reimbursable
  - Undefined Terms Contract – Fixed Price
  - Undefined Terms Contract – T&M or LH
  - Undefined Contract Revision T&M/LH
  - Undefined Contract Revision – Fixed Price Contract
  - Undefined Contract Revision - Cost Reimbursable Contract
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## References - 3.7.G.10

- Policy and Guideline 1.4 - Contract Type Selection
- Policy and Guideline 4.7 - Termination/Cancellation
- Policy and Guideline 5.4 - Security
- Policy and Guideline 5.5 - Construction Contracting

- Policy and Guideline 10.4 - Procurement Action Summaries

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## Applicable Clauses - 3.7.G.11

- SC 602-CLR - Classified Matter Requirements
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Send feedback on ideas and information on this page to the Process Expert, Randy Shibata.



[Randy Shibata](#)



[Karen Archibeque](#)

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